IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1534 of 2006
with
FIRST APPEAL No.2174 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SPL.LAQ OFFICER - Appellant
Versus
HURABEN SIDDIKBHAI GANCHHI & 1 - Respondents

==========

Appearance :
MR MIHOR H.JOSHI, ADDITIONAL ADVOCATE GENERAL WITH MR.S.S.PATEL, ASSISTANT GOVERNMENT PLEADER for Appellant
MR ND NANAVATI, SENIOR ADVOCATE WITH HARSHIT S TOLIA for Respondent No.1.

==========

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 4/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

First Appeal No.1534 of 2006 filed under Section 54 of the Land Acquisition Act, 1894 [“the Act” for short] read with Section 96 of the Code of Civil Procedure, 1908, is directed against judgment and award dated July 18,2005, rendered by the learned Presiding Officer, 3rd Fast Track Court, Patan, in Land Acquisition Reference Case No.2434 of 2002, by which the respondent No.1 is awarded additional compensation at the rate of Rs.350/- per sq.mt., over and above the compensation awarded to her by the Special Land Acquisition Officer at the rate of RS. 25/- per sq.mt., for her acquired land. First Appeal No.2174 of 2006 is filed by the respondent No.1 (orig.claimant) in First Appeal No.1533 of 2006 under the same provisions and against the same award of the Reference Court, wherein the respondent No.1 is claiming enhanced compensation at the rate of Rs.500/- per sq.mt., for her acquired land.

As both the appeals involve common questions of facts and law, this Court proposes to dispose them of by this common judgment.

2. A proposal was received by the State Government to acquire the land of the respondent No.1 in First Appeal No.1534 bearing Survey Nos.347/10/1 & 347/10/2, admeasuring 45224 sq.mts., situated at Radhanpur, Taluka : Radhanpur, District : Patan, for the public purpose of construction of Office-Building/Colony under Narmada Canal Project. On perusal of the said proposal, the State Government was satisfied that the land belonging to the respondent No.1 was likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on August 29, 1991. The respondent no.1 was served with notice under Section 4(1) of the Act. She lodged her objections against the proposed acquisition.

After taking into consideration her objections, the Special Land Acquisition Officer forwarded his report to the State Government as contemplated by Section 5-A(2) of the Act. On consideration of the said report, the State Government was satisfied that the land belonging to the respondent No.1 specified in the notification published under Section 4(1) of the Act was needed for the public purpose of construction of Office-Building/Colony under Narmada Canal Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on January 9,1992. The respondent No.1 was thereafter served with notice for determination of market value payable to her for her acquired land. The respondent No.1 appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 500/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated December 16, 1993 offered compensation to

the respondent No.1 at the rate of Rs.25/- per sq.mt. The respondent No.1 was of the opinion that the offer of compensation made by the Special Land Acquisition Officer was quite inadequate and, therefore, by submitting an application in writing, she required the Special Land Acquisition Officer to refer the case to the Court for determination of just amount of compensation payable to her. Accordingly, reference was made to the District Court at Patan, where it was registered as Land Acquisition Reference Case No.2434 of 2002.

3. On behalf of the respondent No.1, her Power of Attorney Holder Mr.Raghurambhai Ranchhodbhai Thakkar was examined at Exh.26. It was claimed by the said witness in his testimony that the land acquired was even and highly fertile and that crops like millet, cotton, wheat, cumin-seed etc. were being grown, as facility of water was available round the year. According to the said witness, lands surrounding the acquired land,

were put to non-agricultural use and if the land had not been acquired, the land acquired could have been used for non-agricultural purpose, and would have fetched very high amount, if sold. The witness explained that Radhanpur was the main centre of Taluka and was connected by railway. It was also mentioned by him that other facilities, such as telephone, post-office, STD Booths etc., were also available in Town. It was asserted by the witness that at the time of acquisition of the land, population of Radhanpur town was between 30,000 to 50,000 and that it was decided to set up Industrial Estate by G.I.D.C. The witness mentioned that the land under acquisition was assessed by the Office of Town Planning, Mehsana at the rate of Rs. 150/- per sq.mt., but, the correct value of the land was not mentioned therein, because the price of the land prevailing, in the vicinity of the acquired land, was Rs.1000/- per sq.mt. The witness examined on behalf of the respondent No.1 asserted that the respondent No.1 was entitled to compensation at

the rate of Rs.500/- per sq.mt.

In cross-examination by the learned advocate for the Special Land Acquisition Officer, it was stated by the witness that the amount of compensation offered by the Special Land Acquisition was accepted under protest. The suggestion made to the witness that no development had taken place in the Town or that the Town was not connected to National Highway, was denied by him. The suggestion made on behalf of the Special Land Acquisition Officer that value of the land under acquisition was Rs.25/- per sq.mt. and not more, was emphatically denied by him.

In cross-examination by the Acquiring Body, it was stated by the witness that the award rendered by the Special Land Acquisition Officer was not a consent-award. The suggestion made to the witness that drought was prevailing in the area and, therefore, the respondent No.1 was not

able to raise any crop on her land, was also denied by him.

3. After recording of testimony of power of attorney holder of the respondent No.1 was over, a purshis at Exh.27 was filed on June 27, 2005 indicating that the evidence to be led by the claimant was over and no further evidence was proposed to be led by the claimant. By the said purshis, on behalf of the respondent No.1 the Court was informed that evidence to be led on behalf of the claimant was closed.

4. On behalf of the Acquiring Body, Mr.Baleshkumar Alakhabhai Asari, who was Special Land Acquisition Officer, was examined at Exh.28. After referring to the procedure, which was undertaken for the purpose of acquiring the land of the respondent No.1, it was mentioned by the said witness that market value of the land acquired was determined by the Special Land Acquisition Officer on the basis of registered

sale-deeds executed in the last five years before the date of the award. According to him, though Radhanpur was a big town, no noticeable facilities were available in the town, nor was the town industrially developed, nor was any arrangement available for providing water to the agricultural lands situated in the town. According to the witness, the land acquired was uneven and infertile, and even potable water was not available in Radhanpur town. In his testimony, the witness stated that the land acquired was situated in an uninhabited area of Radhanpur town and that the market value determined by the Special Land Acquisition Officer was proper.

During the cross-examination by the claimant, the witness produced 7/12 Extract relating to Survey Nos.347/10/1 & 347/10/2 belonging to the respondent No.1. It was admitted by the witness that he had no personal knowledge about the acquisition proceedings and was deposing before the Court on the basis of the record available in

the Office. It was admitted by the witness that it was difficult to describe the development which might have taken place, on the basis of contents of registered sale-deeds. The witness had to admit that, in fact, he had no personal knowledge about Radhanpur Town.

5. Further, on behalf of the Acquiring Body, witness Somabhai Sadabhai Shrimali, who was then discharging duties as Talati-cum-Mantri, was examined at Exh.33. During the course of recording of his testimony, he mentioned that he had seen the land belonging to the respondent No.1, which was acquired, and as Radhanpur was a drought affected area, the respondent No.1 was able to raise crops of millet, *juvar* etc. and that too only during the monsoon season. According to the witness, the land acquired was situated near Radhanpur-Harij State Highway. What was mentioned by the witness was that at the time of acquisition of the land in question, no development in the vicinity of the land had taken

place.

In cross-examination by the claimant, the witness mentioned that just near Narmada Colony, a big Shopping-Centre had come up and that Radhanpur Town was a developing town. The witness admitted that on the date of tendering of his evidence in the Court, the value of the land situated at Radhanpur was Rs.1000/- per sq.mt.

6. Yet another witness was examined on behalf of the Acquiring Body i.e. Karansinh M.Bhabhor, who was then holding the post of Deputy Executive Engineer, at Exh.35. The said witness mentioned in his testimony that the Special Land Acquisition Officer had determined the amount of compensation payable to the respondent No.1 after taking into consideration registered sale-deeds and determination of market value of the acquired land by the Special Land Acquisition Officer was proper. Though it was mentioned by him that Radhanpur is a big town, it was further stated by

him that the land acquired was uneven and not fertile, as a result of which, the respondent no.1 was able to raise crop of only *Juvar* on the acquired land. The witness mentioned that the main occupation of the people residing in Radhanpur town was agriculture, cattle-breeding and agricultural labour. What was stated by him was that the land acquired was situated in uninhabited area of the town and was at a distance of more than 1 KM away from Gamtal land. It was asserted by the said witness that determination of compensation made by the Special Land Acquisition Officer was proper and that the respondent No.1 was not entitled to compensation at the rate of Rs.500/- per sq.mt.

In his cross-examination by the claimant, it was stated by the witness that at Exh.36 he had produced Index for five years, wherein particulars of sale-deeds were mentioned. It was admitted by the witness that except sale-deeds, no other evidence was adduced during the course

of determination of market value by the Special Land Acquisition Officer. It was also mentioned by him that it was possible that in the registered sale-deeds, correct market value of the land might not have been indicated. According to him, he was personally not knowing as to which crops were being raised on the acquired land, nor was he able to mention as to on which basis average sale price was mentioned by the Talati-cum-Mantri in Exh.36.

After recording of evidence of the witnesses as mentioned above was over, a purshis dated July 8, 2005 was submitted on behalf of the Acquiring Body mentioning, inter alia, that it was not proposed to examine other witnesses on behalf of the Acquiring Body. The purshis submitted on behalf of the Acquiring Body was recorded by the learned Judge of the Reference Court. Thereafter, on behalf of the respondent No.1, an application at Exh.44 was submitted on July 16, 2005 stating, inter alia, that list of documents was omitted to

be filed and, therefore, the matter be taken on board in the interest of justice. The said application was granted by the learned Judge. As the application Exh.44 was granted by the learned Judge, another application of the same date was filed on behalf of the claimant at Exh.45 stating, inter alia, that the documents which were produced along with the list at Exh.28, which were exhibited as Exhs.30 to 50 in Land Acquisition Reference Case No.2433 of 2002, should also be permitted to be produced along with list, though they were xerox copies of Exhs.30 to 50 produced in Land Acquisition Reference Case No.2434 of 2002, because they were part of Government record and it was not possible by any one to concoct the same subsequently. The said application was also granted by the learned Judge by an order dated July 16, 2005. Thereupon, on behalf of the claimant, a list of documents at Exh.46 was submitted on July 16, 2005, and as many as 21 documents were sought to be produced and relied upon by the claimant. After production

of list of documents at Exh.46, another application on behalf of the respondent No.1-claimant was submitted at Exh.47 stating, inter alia, that xerox copies of documents, which were produced at Exhs.30 to 50 on the record of Land Acquisition Reference Case No.2433 of 2002, were being produced on the record of this case and, therefore, the same be exhibited and read in evidence. The application submitted on behalf of the respondent No.1 was granted by the learned Judge by an order dated July 16, 2005.

7. On appreciation of evidence adduced by the parties, the Reference Court held that in view of the contents of Exh.67, dated July 17, 1990, which was Certificate issued by the Town Planning and Valuation Department, Mehsana, price of the land acquired was Rs.150/- per sq.mt., whereas in view of the contents of Certificate dated September 3, 1993 given by the Town Planning and Valuation Department, Mehsana, market value of the land acquired was Rs.250/- per sq.mt. The

learned Judge held that certificate dated September 3, 1993 indicating that the price of land adjoining to the acquired land was Rs.250/- per sq.mt. was not relevant piece of evidence for determining market value of the land acquired, as it was issued two years after the date of publication of notification under section 4(1) of the Act for acquiring the land in question. It was further held by the learned Judge that certificate dated July 17, 1990 indicating that the price of the acquired land was Rs. 150/- per sq.mt. Was a relevant piece of evidence for the purpose of determining market value of the land acquired and after so holding, placed reliance on the said certificate. The learned Judge of the Reference Court accepted the contention advanced on behalf of the claimant that considering the time gap between the above-mentioned Certificate and notification published under Section 4 of the Act, the claimant was entitled to escalation in price of land acquired at the rate of 10% per year for determining its market value. On the

said basis, the Reference Court by impugned judgment and award has held that the respondent No.1 is entitled to compensation at the rate of Rs.350/- per sq.mt. giving rise to above-numbered two appeals.

8. Mr.Mihir H.Joshi, learned Additional Advocate General, with Mr.Sudhanshu S.Patel, learned Assistant Government Pleader, contended that Exh.67, which is a photostat copy of the certificate dated July 17, 1990 issued by the Town Planning and Valuation Department, could not have been received in evidence, as it was neither original document nor certified copy of original document, nor complete document was produced for perusal of the Court and, therefore, enhanced compensation awarded to the claimant by the Reference Court should be set aside. It was argued that except production of Exh.67 and Exh.68, which is a post-notification certificate dated September 3, 1993 issued by the Town Planning and Valuation Department, Mehsana

showing that market price of land adjoining to the land acquired was at the rate of Rs.250/- per sq.mt., no reliable evidence at all was adduced by the claimant and, therefore, the appeal filed by the State Government should be accepted. What was highlighted by the learned counsel for the State Government was that the impugned award suffers from vice of absence of evidence justifying enhanced compensation at the rate of Rs.350/- per sq.mt. and, therefore, the matter should be remanded to the Reference Court for deciding the same *de novo* after permitting the parties to adduce evidence in support of their respective claims.

9. Mr.N.D.Nanavati, learned Senior Advocate, with Mr.H.S.Tolia, learned advocate for the claimant, contented that Exh.67 produced by the claimant was rightly received in evidence and read by the Reference Court, as a result of which, First Appeal filed by the State Government has no substance and, therefore, the same should

be dismissed. According to the learned counsel for the claimant, the contents of Exh.67 were never disputed either by the Special Land Acquisition Officer or the Acquiring Body and, therefore, the Reference Court was justified in placing reliance thereon while determining the amount of compensation payable to the claimant. It was maintained on behalf of the claimant that even Exh.68 was also a relevant piece of evidence, on the basis of which compensation payable to the claimant can be determined and, therefore, the matter should not be remanded to the Reference Court as urged on behalf of the State Government, more particularly when the Special Land Acquisition Officer had also made reference to Exh.67 in his Award. According to the learned counsel for the claimant, on the basis of Exh.68 the claimant would be entitled to compensation at the rate of Rs.500/- per sq.mt. and, therefore, after dismissing the appeal filed by the State Government, the appeal filed by the claimant for enhancement of compensation should

be accepted by the Court.

10. This Court has heard Mr.Mihir H.Joshi, learned Additional Advocate General with Mr.S.S.Patel, learned Assistant Government Pleader for the appellant, as well as Mr.N.D.Nanavati, learned Senior Advocate, with Mr.S.H.Tolia, learned counsel for the respondent no.1, at length and in great detail. This Court has also considered the evidence adduced by the parties before the Reference Court.

11. From the record of the case, it is evident that witness Raghurambhai Ranchhodbhai Thakkar, who is power of attorney holder of the original claimant, was examined at Exh.26 in support of claim for enhanced compensation. However, it is an admitted fact that no sale-deed was produced for perusal of the Court by the claimant in support of her claim that she was entitled to compensation at the rate of Rs.500/- per sq.mt. What was produced by the claimant with the list

at Exh.46 was Index of registration of sale-deeds for perusal of the Court. The certified copies of the sale-deeds were never produced by the claimant before the Reference Court. Under the circumstances, Index could not have been taken into consideration and is rightly not taken into consideration while determining the question as to whether the claimant was entitled to compensation at the rate of Rs. 500/- per sq.mt. What was relied upon by the claimant in support of her claim for enhanced compensation was certificate dated July 17, 1990 given by the Town Planning and Valuation Department, Mehsana indicating that the market value of the land was assessed at Rs. 150/- per sq.mt., and another certificate dated September 3, 1993 issued by the Town Planning and Valuation Department, Mehsana, showing that the market price of adjoining land was Rs. 250/- per sq.mt. Those two documents were produced at Exhs.67 & 68 respectively. However, perusal of the original record received from the Reference Court makes it very clear that what was

produced before the Reference Court was xerox copy of certificate dated July 17, 1990 issued by the Town Planning and Valuation Department, Mehsana. The document produced at Exh.67 is neither original certificate issued by the Town Planning and Valuation Department, Mehsana, nor it is certified copy of the same and, therefore, the same could not have been received and read in evidence. It is an admitted position that no one was examined by the claimant from the Town Planning and Valuation Department, Mehsana to prove the contents of Exh.67 dated July 17, 1990. Further, the said document was sought to be produced by the claimant with list at Exh.46, but, as observed earlier, production of the same was objected to by the Special Land Acquisition Officer and the Acquiring Body. Under the circumstances, it was incumbent upon the claimant to prove the document as required by the provisions of the Indian Evidence Act, 1872. Section 61 of the Evidence Act provides that the contents of documents may be proved either by

primary or by secondary evidence, and as per Section 62 of the said Act, primary evidence means the document itself produced for the inspection of the Court. Admittedly, in this case, original of Exh.67 was not produced for inspection of the Court at all. Secondary evidence as explained by Section 63 of the Act would be certified copies given under the provisions of the Evidence Act, or copies made from the original by mechanical process which in themselves ensure the accuracy of the copy, and copies compared with such copies, or copies made from or compared with the original, or counterparts of documents as against the parties, who did not execute them, or oral accounts of the contents of a document given by some person, who had himself seen it. It is nobody's case that Exh.67 is receivable in evidence as secondary evidence. Further, a litigant would be entitled to lead secondary evidence to prove the contents of a document provided the condition-precedents set out in Section 65 of the Evidence Act are

satisfied. A bare reading of Exh.67 makes it clear that it was addressed by the Deputy Town Planner, Mehsana to Mamlatdar, Radhanpur relating to the land in question and, therefore, even if it is treated to be a public document within the meaning of Section 74 of the Evidence Act, it could not have been received in evidence, unless certified copy of the same as required by Section 76 of the said Act was produced by the claimant. What is relevant to notice is that several other documents were enclosed along with the report dated July 17, 1990, which is produced by the claimant at Exh.67. Those enclosures are not brought on record of the case and only the first page of the report is produced by the claimant on the record of the case. As the full document was not produced on the record of the case, the same could not have been received and read in evidence. Therefore, Exh.67 will have to be excluded from consideration while determining market value of the land acquired in the instant case.

12. It may be mentioned that while estimating the market value of the land acquired in the instant case at the rate of Rs.150/- per sq.mt., the Deputy Town Planner, Mehsana took into consideration several factors, such as the measurement of the land, its assessment made under the Land Revenue Code, development which had taken place near the land, its frontage, location, approach facility etc. as well as extracts of sale instances relating to the lands situated near the acquired land. Meaning thereby, the Deputy Town Planner, Mehsana assessed the land as non-agricultural land and not as an agricultural land, though, admittedly, the land was agricultural land when it was acquired. Therefore, even if one comes to the conclusion that Exh.67 could have been received and read in evidence, this Court finds that the Reference Court should have made appropriate deduction from the price of land as mentioned in the certificate while determining the market value of the land

acquired. The Reference Court was not justified at all in awarding compensation to the claimant at the rate of Rs.350/- per sq.mt. on the basis of the said document. There is no manner of doubt that determination of compensation made by the Reference Court on the basis of Exh.67 stands vitiated for the reasons mentioned above.

13. Similarly, the claimant would not be entitled to rely upon Exh.68 in support of her claim that the Reference Court should have awarded compensation to her at the rate of Rs.500/- per sq.mt. Exh.68 is also the report dated September 3, 1999 forwarded by the Deputy Town Planner, Mehsana to the Mamlatdar, Radhanpur, indicating that market value of land bearing survey no.345 of Radhanpur was Rs.250/- per sq.mt., having regard to its measurement, developed area in which it was located, its frontage, its location, approach facility etc. This document could not have been received and read in evidence for the reasons,which have been mentioned by this Court

while discussing admissibility of Exh.67 in evidence. Exh.68 is also not a complete document by itself, but, what is produced on the record is first page of the document and not the enclosures to the said document. Further, Exh.68 indicates price of Survey No.344, which is adjacent to the land acquired in the instant case, as on September 3, 1999. In the instant case, notification issued under Section 4 of the Act was published in Official Gazette on August 20, 1991 and, therefore, the document which came into existence after two years of publication of notification under Section 4(1) of the Act relating to an adjoining land would not be relevant for the purpose of ascertaining market price of the land acquired in the instant case. Under the circumstances, the same is rightly not relied upon by the Reference Court for the purpose of considering the question whether the claimant would be entitled to compensation at the rate of Rs.500/- per sq.mt., nor the claimant would be entitled to the compensation at the rate

of RS. 500/- per sq.mt.on the basis of the said certificate as is claimed in First Appeal No.2174 of 2006.

14. Except the abovereferredto two documents, no other evidence worth the name was adduced by the claimant before the Reference Court. Once these two documents are excluded from consideration, the claimant would not be entitled to compensation more than what was awarded by the Special Land Acquisition Officer by his award. At the same time, it is also important to notice that no evidence could be adduced either by the Special Land Acquisition Officer or by the Acquiring Body to enable the Reference Court to determine just compensation payable to the claimant. In fact, the claimant had proceeded on the footing that documents sought to be produced by her along with the list Exh.46 were admissible in evidence and that on the basis of those documents, she would be entitled to get enhanced compensation. If the correct position of law had

been brought to her notice, she would have led appropriate evidence before the Court in support of her claim for enhanced compensation. The conclusions reached by the Reference Court are not warranted nor justifiable on the basis of evidence produced before it. The settled legal principles of law in determining the compensation were also not taken into consideration by the Reference Court. This Court finds that the award of the Reference Court is wholly unsustainable and the Reference Court should have determined the compensation on legal, valid, reliable and acceptable relevant evidence and not based on feats of imagination. On the facts and in the circumstances of the case, this Court is of the opinion that interest of justice would be served if the matter is remitted to the Reference Court for reconsideration and liberty is reserved to the parties to lead appropriate evidence in support of their respective claims.

15. For the foregoing reasons, First Appeal

No.1534 of 2006 succeeds. The judgment and award dated July 18, 2005 rendered by the learned Presiding Officer, 3rd Fast Track Court, Patan, in Land Acquisition Reference Case No.2434 of 2002 is hereby set aside. The matter is remitted to the Reference Court for redetermination of compensation payable to the claimant. Both the parties would be entitled to lead fresh evidence in support of their respective claims. The Reference Court shall decide the matter afresh on the basis of evidence that may be led before it by the parties, without being influenced by the fact that the impugned award rendered by the Reference Court is set aside by the High Court. As is clear from the record, acquisition of the land of the claimant had taken place pursuant to publication of notification issued under Section 4(1) of the Act on August 20, 1991, which means the matter is fairly old. Under the circumstances, the Reference Court is directed to dispose of the reference preferably on or before October 31, 2006 and latest by December 31, 2006.

Subject to above-referred to direction, First Appeal No.1534 of 2006 is allowed. There shall be no order as to costs.

First Appeal No.2174 of 2006 filed by the claimant for enhancement of compensation is hereby dismissed. There shall be no order as to costs.

R & P received from the Reference Court be remitted to the Reference Court immediately.

The Registry is directed to draw decree in terms of this judgment immediately, so that direction given by the Court in this judgment to the Reference Court to dispose of the Reference within the time stipulated in this judgment, can be complied with.

[J.M.PANCHAL,J.]

[SMT.ABHILASHA KUMARI,J.]

(patel)